

TITLE 4: BUSINESS AND SPECIAL LICENSES, REGULATIONS
DIVISION 6: SOLID WASTE HANDLING FRANCHISES
Chapter 10: ADMINISTRATION, ENFORCEMENT AND REMEDIES
Sections:

- 46.101 Administration, Enforcement and Remedies.
- 46.102 Liquidated Damages.
- 46.103 Resolution of Subscriber Complaints.
- 46.104 Notices.

46.101 Administration, Enforcement and Remedies.

(a) If the Director determines at any time that the Grantee's performance of the Solid Waste Handling services authorized/required in its Franchise Agreement, or any of its other actions, are not in conformity with the provisions of the Franchise Agreement, the provisions of this Code, the requirements of the California Integrated Waste Management Board, including but not limited to, requirements for source reduction and recycling (as to the waste stream subject to the Franchise Agreement) or any other applicable federal, state, or local law or regulation, including but not limited to the laws governing collection, transfer, storage and/or disposal of Solid Waste, the Director will notify Grantee in writing of such deficiencies ("Notice of Deficiency").

Without limiting the generality of the foregoing the County may provide a Notice of Deficiency for any of the following:

(1) If the Grantee practices, or attempts to practice, or if it is determined by the Department that the Grantee has heretofore practiced, any fraud or deceit upon the County or upon any member of the public, including any subscriber of the Grantee;

(2) If the Grantee becomes insolvent, unable or unwilling to pay its debts, or upon listing on an order in a bankruptcy proceeding for relief related to operations pursuant to this Division in favor of Grantee and acting to the detriment of County or of a subscriber of the Grantee;

(3) If the Grantee fails to provide or maintain in full force and effect the indemnifications, insurance, performance bonds or other Security, bank account or any other item required by Chapter 9 of this Division;

(4) If the Grantee willfully violates any orders or rulings of any regulatory body having jurisdiction over the Grantee in the operation of its business under this Division;

(5) If the Grantee ceases or fails to provide Solid Waste Handling services as required under its Franchise Agreement to a substantial number of subscribers within its Franchise Area or over all, or a substantial portion of, its Franchise Area, for a period of seven (7) days or more, for any cause which was reasonably within the ability of the Grantee to have prevented or overcome, and where such cessation or failure is not authorized by the provisions of this Division or of the applicable Franchise Agreement. As used in this provision, a "substantial number of subscribers" can be as few as one if the Grantee's cessation or failure to provide Solid Waste Handling services creates or tends to create a threat to public health or safety;

(6) If the Grantee willfully fails to make any payments required under this Division or its Franchise Agreement and/or refuses to provide the County with requested information, manifests, reports, and/or test results in a timely manner as provided in this Division or its Franchise Agreement;

(7) Any other act or omission by the Grantee which violates the terms, warranties, conditions, or requirements of its Franchise Agreement, or of this Division, as it may be amended from time to time, or of any order, directive, rule, or regulation issued by a regulatory agency;

(8) If the Grantee willfully and persistently, and without the consent of the Director, fails to deliver the Solid Waste to the Solid Waste Facility specified in its Franchise Agreement, if any; and

(9) If there is any felony conviction for a violation of any federal or state law relating to: bribery of public officials or other acts of public corruption; fraud; anti-trust; or unfair trade practices, including predatory pricing;

(A) of any employee of Grantee, where such felony conviction relates to actions taken by such employee in respect to Grantee's Franchise Agreement; or

(B) of the Chief Executive Officer, Chief Operating Officer or Chief Financial officer of Grantee.

(b) The Notice of Deficiency may provide a reasonable time within which correction of all noted deficiencies is to be made. Unless a shorter or longer period of time is specified in the notice of deficiency sent by the Director, a reasonable time for correction shall be sixty (60) days from the receipt by the Grantee of such written notice. If the Grantee cannot reasonably correct or remedy a noted deficiency within the time specified in the Notice of Deficiency, but the Grantee immediately commences to correct or remedy such deficiency within the time set forth in the Notice of Deficiency and diligently pursues such correction or remedy thereafter Grantee shall not be deemed to have failed to correct or remedy the Notice of Deficiency. Some deficiencies are by their nature not curable, and no time period to correct or remedy such deficiency shall be given in the Notice of Deficiency (by way of example but not limitation, the deficiencies noted in Sections 46.101(a)(1), (2), (3) or (5) generally are not curable).

(c) The Director shall review the Grantee's response to the Notice of Deficiency. If the Director determines that the Grantee has not cured the deficiency, or if there is no cure period provided in the Notice of Deficiency given the

nature of the deficiency, the Director shall either:

- (1) Refer the matter directly to the Board for decision pursuant to subsection (d) of this Section; or
- (2) Decide the matter and notify the Grantee of that decision, in writing.

(A) The decision of the Director may be to terminate the Franchise Agreement or may be to impose some lesser sanction;

(B) The decision of the Director shall be final and binding on Grantee unless the Grantee files a "Notice of Appeal" with the Director within thirty (30) days of receipt of the Director's decision. The Notice of Appeal shall be in writing, shall contain a detailed and precise statement of the basis for the appeal, and shall be accompanied by the fee, if any, which is applicable to the filing of such an appeal.

(C) Within ten (10) working days of receipt of a Notice of Appeal, the Director shall either refer the appeal to the Board for proceedings in accordance with subsection (d) of this Section, or refer the matter to a hearing officer for proceedings pursuant to Chapter 27 of Division 2 of Title 1 of this Code.

(d) (1) Should the Director refer the Notice of Deficiency to the Board in the first instance, or if the matter reaches the Board pursuant to a Notice of Appeal, the Board shall either:

(A) Refer the matter to a hearing officer for proceedings pursuant to Chapter 27 of Division 2 of Title 1 of this Code; or

(B) Set the matter for hearing.

- (2) If the Board sets the matter for hearing:

(A) The Board shall give Grantee, and any interested person requesting the same, fourteen (14) days written notice of the time and place of the hearing. At the hearing, the Board shall consider the report of the Director indicating the deficiencies, and shall give the Grantee, or its representatives and any other interested person, a reasonable opportunity to be heard.

(B) Based on the evidence presented at the public hearing, the Board shall decide the appropriate action to be taken. If, based upon the record, the Board determines that as noted in the Notice of Deficiency the Grantee's performance of the Solid Waste Handling services authorized/required in its Franchise Agreement, or any of its other actions, are not in conformity with the provisions of the Franchise Agreement, the provisions of this Code, the requirements of the California Integrated Waste Management Board, including but not limited to, requirements for source reduction and recycling (as to the waste stream subject to the Franchise Agreement) or any other applicable federal, state, or local law or regulation, including but not limited to the laws governing collection, transfer, storage and/or disposal of Solid Waste, then the Board, in the exercise of its sole discretion, may terminate the Franchise Agreement forthwith or impose such lesser sanction as it deems appropriate. The decision of the Board shall be final and conclusive.

(e) Grantee's performance under its Franchise Agreement is not excused during the period of time prior to the Director's or the Board's final determination, as the case may be, regarding the validity of, and appropriate response to, the deficiencies noted in the Notice of Deficiency.

(f) In the event Grantee: (i) has received a Notice of Deficiency and fails to perform Solid Waste Handling services; or (ii) has had its Franchise Agreement terminated; the County, acting through the Department, reserves the right, in addition to all other rights available to the County, to take any one or combination of the following actions:

(1) To rent or lease from Grantee, at its respective fair and reasonable rental value, all or any part of the Grantee's equipment (including collection containers utilized by subscribers and office equipment and billing programs), equipment yard and office utilized by Grantee in providing the Solid Waste Handling services required under its Franchise Agreement. The County may rent or lease such equipment and real estate for a period not to exceed six (6) months, for the purpose of performing the Solid Waste Handling services, or any part thereof, which Grantee is (or was) obligated to provide pursuant to its Franchise Agreement. The County may use said rented equipment and real estate to directly perform such Solid Waste Handling service or to assign it to some other Grantee or Person to act on the County's behalf. Grantee shall be held responsible for the costs to insure the County or its assignee from all liability resulting from the operation of Grantee's equipment. In the case of equipment or real estate not owned by Grantee, Grantee shall assign to the County, to the extent Grantee is permitted to do so under the instruments pursuant to which Grantee possesses such equipment or real estate, the right to possess the equipment or real estate.

(2) As used in this subsection, "reasonable rental value" means the rate for such equipment as listed in the State Department of Transportation publication, "Labor Surcharge and Equipment Rental Rates," in effect at the time the County leases the equipment. If a particular piece of equipment is not listed in said publication or if said publication is not current, the reasonable rental value may be established by the Director by any equitable alternative method. For real estate, the "reasonable rental value" means its market rental rate as established by the Director using an equitable method.

(3) If the County exercises its rights under this subsection, the County shall pay or owe Grantee the reasonable rental value of the equipment and real estate so taken for the period of the County's possession thereof. The County may offset any amounts due to Grantee pursuant to this provision against any amounts due to County from Grantee.

(4) All revenues owed by subscribers which are attributable to services performed by or at the direction of the County during County's assumption of Grantee's Solid Waste Handling duties shall be billed by and paid to the

County. To the extent Grantee receives such revenue after County's assumption of Grantee's Solid Waste Handling duties, Grantee shall pay such revenue to County promptly after receipt thereof (or promptly after County has performed the services related to such revenue, if the revenue was received by the Grantee prior to the County's assumption of duties) and Grantee shall be deemed to have assigned to County all of Grantee's right and interest to any such revenues.

(g) The County rights set forth in this Section are in addition to, and not in limitation of, any other powers or rights available to the County upon failure of Grantee to perform its obligations under this Division or its Franchise Agreement. Further, by entering into its Franchise Agreement issued pursuant to this Division each Grantee acknowledges that its violation of the terms of this Division or its breach of the terms of its Franchise Agreement shall cause the County to suffer irreparable injury and damages sufficient to support injunctive relief to enforce the provisions of the Franchise Agreement, and to enjoin the breach thereof.

(h) This Section shall not apply to violations or deficiencies which fall within the sole jurisdiction of the County's Department of Public Health, Division of Environmental Health Services under Grantee's required Health and Safety Permit and which are not, and do not become, violations or deficiencies under this Division.

Adopted Ordinance #3670 (1996);

46.102 Liquidated Damages.

(a) In its quarterly report submitted to the Department in accordance with Section 46.083(b), Grantee shall certify to Department that it has met its service obligations during such quarter. If Grantee cannot so certify, if its complaint record evidences, or if the Department notifies Grantee that it has failed to meet any of its service obligations, then Grantee shall pay the indicated liquidated damages for each of the following violations/breaches which have been verified to the satisfaction of the Department:

(1) Failure to Correct Missed Service; failure to correct a missed collection in accordance with Section 46.061(f); Escalated Damages;

(2) Failure to Timely Commence Services; failure to commence service within seven (7) working (waste collection) days of subscriber's request therefore in accordance with Section 46.061(e); Escalated Damages;

(3) Discourtesy or Requesting a Gratuity; discourteous behavior, or requesting a gratuity, by Grantee's employees reported by or complained of by subscribers to Grantee or Department in noncompliance with Sections 46.061(a)(3) and (m); Escalated Damages;

(4) Damage to Subscriber's Property; demonstrated damage reported by or complained of by subscriber to Grantee in accordance with Section 46.061(l), not fixed promptly upon such report or complaint; \$250;

(5) Collection Outside Permitted Hours; providing service outside hours authorized in accordance with Section 46.061(b); Escalated Damages;

(6) Failure to Timely Respond to Complaint; failure to timely respond to any complaint and correct related violations/breach in services in accordance with Section 46.061(k); \$100;

(7) Failure to Record Complaint; failure to record a complaint in accordance with Section 46.061(k); \$100;

(8) Failure to Make Records of Complaints Available to Department; failure to provide Department immediate access to records of complaints in accordance with Section 46.061(k); \$1000;

(9) Failure to Submit Reports to Department; failure to timely submit complete reports to the Department in accordance with Section 46.061(d) and Chapter 8 of this Division; \$1000.

(b) At any time following the time when any of the foregoing violations/breaches have been verified to the satisfaction of the Department, the Department may remove an amount equal to the indicated liquidated damages from the \$2,500 bank deposit for liquidated damages which is required to be maintained by Grantee pursuant to Section 46.097. The Department shall provide written notice to the Grantee that it is satisfied that a violation/breach has occurred and that it has imposed and removed, or will remove, the indicated liquidated damages from the \$2,500 bank account of Grantee. Within ten (10) days of receiving such notice from the Department, Grantee may contest imposition of such liquidated damages by notice to the Department, indicating the basis for disagreement. Any dispute relating thereto shall be resolved under the Notice of Appeal provisions of Section 46.101. In the event Grantee owes the County any liquidated damages upon the termination of its Franchise Agreement, Grantee's liability shall survive the termination thereof.

(c) A high level of collection service quality and subscriber satisfaction and therefore consistent and reliable service, is of utmost importance to the County and the Solid Waste Handling services subscriber. County will have considered and relied on Grantee's representations as to its quality of service commitment in approving any Franchise Agreement, and any violation/breach by Grantee of its Solid Waste Handling service obligations referenced in this Section represents a loss of bargain to the County. The Grantee further acknowledges that quantified standards of performance are necessary and appropriate to ensure such consistent and reliable collection service, and if Grantee fails to meet service obligations referenced in this Section, County will suffer damages (including its subscribers' inconvenience; complaints by subscribers; lost Board and staff time; and loss of bargain) and that it is and will be impracticable and extremely difficult to ascertain and determine the value thereof. Therefore, the County and Grantee acknowledge that the above liquidated damages represent a reasonable estimate of the amount of such damages, considering all of the circumstances, including the relationship of the amount of the liquidated damages to

the range of harm to County that reasonably could be anticipated and the anticipation that proof of actual damages would be extremely costly and inconvenient for both the Grantee and County. In entering into its Franchise Agreement the Grantee specifically affirms the accuracy of the statements made above and the fact that Grantee has had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision.

(d) The rights of the County set forth in this Section are in addition to, and not a limitation on, any other rights which County may have against Grantee for the failure to observe any condition or term of this Division and/or its Franchise Agreement, including the violations/breaches of same set forth in this Section for which liquidated damages are provided.

Adopted Ordinance #3670 (1996);

46.103 Resolution of Subscriber Complaints

Procedures for resolution of complaints and other disputes shall be as follows:

(a) A subscriber dissatisfied with Grantee's decision regarding a complaint may ask the Director to review the complaint. To obtain this review, the subscriber may request County review within thirty (30) days of receipt of Grantee's response to the Complaint, or within forty-five (45) days of submitting the complaint to the Grantee, if the Grantee has failed to respond to the complaint. The Director may extend the time to request the County's review for good cause.

(b) Before reviewing the complaint, the Director shall refer it to the Grantee. If the Grantee fails to cure the complaint within ten (10) days after such referral, the Director shall review the complaint and determine if further action is warranted. The Director may request written statements from the Grantee and subscriber, or oral presentations or both written and oral presentations.

(c) The Director shall determine if the subscriber's complaint is justified, and if so, what remedy, if any, shall be applied. The remedy provided to the subscriber under this Section shall be limited to a refund of subscriber charges related to the period of violation of any of the terms of this Division or of the breach of any term of the applicable Franchise Agreement. In addition to any other remedy of County contained in this , County may impose liquidated damages of up to one hundred dollars (\$100.00) payable to the County for any single event or series of related events, or actual damages as demonstrated during the resolution procedure.

(d) The Director may delegate the duties under this Section to a designee. The decision of the Director or a designee shall be final on any matter of five thousand dollars (\$5,000.00) or less. In the event of a decision on a matter awarding more than five thousand dollars (\$5,000.00), Grantee may seek review pursuant to the Notice of Appeal procedure contained in Section 46.101.

(e) This Section shall not apply to disputes involving the implementation of the Total Rate approved by the Board or the adjustments thereto specifically authorized by this Division.

Adopted Ordinance #3670 (1996);

46.104 Notices.

Except as otherwise required by governing law, any notice, information, request or reply ("Notice") required or permitted to be given under the provisions of this Division shall be in writing and shall be given or served either personally or by mail. If given or served by mail, such Notice shall be deemed sufficiently given if: (1) (i) deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or (ii) sent by express mail, Federal Express, or other similar overnight service, provided proof of service is available; and (2) addressed to (i) the Grantee at its most recent address of record with the Department or (ii) to the Director at the then-current address of the Department, as the case may be.

Adopted Ordinance #3670 (1996);